

LETTERS *to the Editor*

Professional Corporations

To the Editor: Wide publicity has been given to the recent announcement of the Internal Revenue Service that it will now recognize many professional corporations formed under state statutes "as corporations for tax purposes." The Information Release of August 8, 1969, issued by the IRS is quite specific and I attach a copy hereto.

You will note that professional corporations substantially identical to those corporations recently litigated by the Federal Courts will be "let alone" by the IRS insofar as the issue of corporate recognition is concerned.

The decision of the IRS quite obviously removes the most menacing hurdle from the use of the corporate form by physicians, dentists and attorneys. However, the IRS recognition of professional corporations does not mean that *every* physician should immediately incorporate.

There remain many legal and administrative problems connected with adoption of the corporate form of practice. Competent professional advice is still absolutely essential.

Physicians must understand that practicing as a corporation involves real alterations in their daily habits and total patterns. If the corporate form is just a "piece of paper" further trouble is guaranteed. IRS recognition of professional corporations removes opposition to the corporate concept but doesn't change the *regular rules* applied by the IRS to corporations generally. The physician must understand this fact before incorporating.

Finally, I still have reservations regarding the ultimate recognition of one-man professional corporations. The legal attack on the one man (or two-man) corporation is still available to the Internal Revenue Service, even though it has in general recognized professional corporations as corporations for tax purposes. Solo practitioners should carefully examine this possibility as well as the economics of corporate practice before formulating a decision on whether or not to incorporate.

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(See also Mr. Hassard's article, "Medical Corporations—Some Observations," *Calif. Med.*, 110:512-513, June 1969.—Editor.)

Internal Revenue Service—Technical Information Release, 8 August 1969:

The Internal Revenue Service announced today, in response to recent decisions of the Federal Courts, that it is conceding that organizations of doctors, lawyers, and other professional people organized under state professional association acts will, generally, be treated as corporations for tax purposes.

This action followed a decision not to apply to the Supreme Court for certiorari in the recent cases of *United States v. O'Neill*, and *Kurzner v. United States*. This decision was made by the solicitor general and concurred in by the assistant attorney general (Tax Division) and the commissioner and chief counsel, Internal Revenue Service.

Both of these decisions held that a group of doctors organized under state law was classifiable as a corporation for Federal tax purposes. Obviously, however, the government must reserve the right to conclude differently in any case that reflects special circumstances not present in *O'Neill* or *Kurzner*.

An earlier decision had been made not to seek certiorari in *U.S. v. Empey*, holding a group of lawyers organized under the general corporation laws of Colorado to be a corporation for Federal tax purposes.

Nor will the government further press its appeals presently pending in the 5th and 8th Circuits. These are respectively *Holder v. United States*, and *Wallace v. United States*. Also, no appeal will be prosecuted in any other pending cases decided adversely to the government on the same issue involving similar facts. Finally, all similar cases now in litigation or under audit will be reviewed to see if they should be conceded.

Implementing instructions will be issued to field personnel—if necessary on a state-by-state basis—as soon as possible. In addition, appropriate modifications of existing regulations will be required consistent with these decisions.

Drowning and Hyper-Ventilation Syndrome

To the Editor: I was recently involved in a death by drowning that makes me feel that hyper-ventilation syndrome is a not uncommon form of death. The exact circumstances make me feel that our standard forms of resuscitation need some important improvement. As an M.D. and certified NAUI instructor, I feel obligated to call attention to these facts.

I will recount the shocking and almost unbelievable death so that others may be possibly saved under similar circumstances. I was taking a friend on an ocean boat dive off Catalina in May of 1968. He had a fair amount of pool practice, but only one previous ocean dive.

He was a young (30-year-old) former athlete and in excellent physical condition, but had shown some moderate fear on his first dive, about four months prior. He had done some thrashing to reach the ship's ladder and complained of a moment's "blackout." This "blackout" was apparent to no one but himself, other than as a possibly dazed or exhausted expression, so not much was thought of it.

There was no apparent fear on the present dive. On entering the water, I re-checked his gear and he signaled "OK." I had planned to take him in to shore since it was a calm day and make a very gradual submergence, because on the previous day

he had experienced difficulty in getting down, claiming not enough weights (it was a two-day trip this time).

We snorkled over toward shore, picking clear spots through the kelp. We were about 150 feet from the boat and 50 feet from the shore. I was taking the lead since he appeared to want this and was about ten feet ahead when he called, "Hey, Doc, I think I'll go back to the boat." This surprised me because it was a beautiful day, nice clear water and we were almost to the shore.

I swam back to him and, by this time, he had swum out of the clear passage we were following, to the edge of the kelp (as though he were thinking of going in a direct line through the kelp toward the boat).

We faced each other about two feet apart. I asked him, "What do you want to go back for?" He did not remove the snorkel from his mouth or attempt to reply. He just looked at me. Under the circumstances, I felt it better not to push my question and decided to go along with his desire to return to the boat. I indicated going back through the clear passage instead of through the kelp. His breathing at this time sounded normal and there was nothing to indicate trouble. However, he turned toward the kelp and the boat instead of the clear passage.

I pulled him gently by the shoulder and again indicated the clear space. He again turned toward the kelp (there was about 15 to 20 feet of it and then clear water to the boat). The boat had stood a little off shore because of some current and rocks.

At this point I decided to be a little foresighted and get ready for trouble if it should come. There was no real reason to assume he wouldn't swim back to the boat without difficulty as he had done the day before. At the worst, I felt I might have to help him get untangled from the kelp or some such. I put two short puffs in my safety vest for slight added bouyancy, put the mouthpiece of my regulator in my mouth and looked up to see what my companion was doing. He was nowhere to be seen.

I looked under the water ahead of me in the direction he had taken, and there he was, about 6 feet ahead and 5 feet down, slowly sinking.

I swam down to him with a little extra hard kicking. The small amount of air in my vest was no real obstacle. He was not tangled in kelp but he was unconscious and I noticed when I got him to the surface, he was a little heavy (lungs already